

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

v.

DARRYL WILLIAMS,

Defendant.

Case No. 3:99-cr-00161-HDM-RAM

ORDER

Defendant Darryl Williams has filed a motion for compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A). (ECF No. 44). The government has opposed (ECF No. 53), and Williams has replied (ECF No. 55).

On December 2, 1999, Williams robbed a California Federal Bank branch in Reno, Nevada. During the robbery, Williams showed the tellers a scanner and said it would alert him if they activated the silent alarm and that he would shoot them if they did. On December 13, 1999, Williams was pulled over for crossing a highway dividing line. In the middle of the traffic stop, Williams took off in his vehicle, leading police on a high-speed car chase that ultimately resulted in a fourteen-hour standoff during which Williams discharged a firearm. Williams was charged in state court with several counts related to the police chase and armed standoff. He was charged in federal court, in this action, with possession of a firearm by a prohibited person and bank robbery.

Williams agreed to plead guilty to bank robbery in this action, pursuant to a plea agreement, and was sentenced to 165

months in prison. (ECF No. 29). Williams did not begin to serve the instant sentence until 2016, after he completed his Nevada state sentence imposed in connection with the armed standoff. (See ECF No. 44 at 4 & n.4). Having served about 53 months of his 165-month sentence, Williams now seeks early release from confinement pursuant to the provisions of 18 U.S.C. § 3582(c)(1)(A).

I. Standard

18 U.S.C. § 3582(c)(1)(A) provides in relevant part:

[T]he court, . . . upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier, may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that--

(i) extraordinary and compelling reasons warrant such a reduction;

. . .

and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.¹

U.S.S.G. § 1B1.13 provides:

Upon motion of the Director of the Bureau of Prisons under 18 U.S.C. § 3582(c)(1)(A), the court may reduce a term of imprisonment (and may impose a term of supervised

¹ In addition to "extraordinary and compelling reasons," the court may grant a motion if "the defendant is at least 70 years of age, has served at least 30 years in prison, pursuant to a sentence imposed under section 3559(c), for the offense or offenses for which the defendant is currently imprisoned, and a determination has been made by the Director of the Bureau of Prisons that the defendant is not a danger to the safety of any other person or the community, as provided under section 3142(g)." 18 U.S.C. § 3582(c)(1)(A)(ii). Because Williams is not over 70 years of age and has not served more than thirty years in prison, this provision does not apply.

1 release with or without conditions that does not exceed
2 the unserved portion of the original term of
3 imprisonment) if, after considering the factors set
4 forth in 18 U.S.C. § 3553(a), to the extent that they
5 are applicable, the court determines that—

6 (1)(A) extraordinary and compelling reasons warrant
7 the reduction;

8 . . .

9 (2) the defendant is not a danger to the safety of
10 any other person or to the community, as provided in 18
11 U.S.C. § 3142(g); and

12 (3) the reduction is consistent with this policy
13 statement.

14 U.S.S.G. § 1B1.13.

15 The defendant is not entitled to be present for a hearing on
16 a motion for compassionate release. See Fed. R. Crim. P. 43(b)(4).

17 **II. Analysis**

18 Williams seeks release pursuant to § 3582(c)(1)(A) due to the
19 COVID-19 epidemic and his underlying health conditions, which put
20 him at greater risk of severe COVID-19 complications should he
21 contract the virus. The government opposes, arguing first the court
22 should stay this action until the warden has decided whether to
23 release Williams to home confinement as part of ongoing class
24 action litigation in the Central District of California. The
25 government further argues that although Williams has demonstrated
26 extraordinary and compelling reasons for his release, he remains
27 a danger to the community and the § 3553(a) factors do not favor
28 his release.

29 **A. Exhaustion**

30 Before a defendant may file a § 3582(c)(1)(A) motion, he must
31 either (1) exhaust any administrative appeals of the warden's
32 refusal to bring a motion or (2) wait thirty days from the warden's

1 receipt of the request, whichever is earlier. Williams' counsel
2 submitted a request for compassionate release to the warden May
3 26, 2020. (ECF No. 45-1). Thirty days have elapsed from the date
4 Williams's request was submitted, so the motion is exhausted.

5 The government argues that Williams is a member of a class
6 action consisting of Lompoc inmates in which the warden has been
7 ordered to evaluate each class member and provide written notice
8 either granting or denying release to home confinement. *Torres et*
9 *al. v. Milusnic et al.*, No. CV 20-4450-CBM-PVC(x). The government
10 submits that by participating in the class action, Williams has
11 sought to expand his administrative remedies and must therefore
12 wait for the warden's response in that case.

13 The defendant opposes any stay of this action.

14 The government's argument that the motion is unexhausted
15 because Williams has sought to expand his administrative remedies
16 is not persuasive. All that § 3582(c)(1)(A) requires is that 30
17 days have elapsed since the warden received the defendant's request
18 for compassionate release. Because that condition is met here, the
19 motion is exhausted.

20 In light of the defense's objection to a stay, and for the
21 reasons set forth above, the court declines to stay consideration
22 of the compassionate release motion.

23 **B. Extraordinary and Compelling Reasons**

24 Section 1B1.13 sets forth specific examples of "extraordinary
25 and compelling reasons," including in relevant part that the
26 defendant is "suffering from a serious physical or medical
27 condition . . . that substantially diminishes the ability of the
28 defendant to provide self-care within the environment of a

1 correctional facility and from which he or she is not expected to
2 recover." U.S.S.G. § 1B1.13 app. n.(1)(A)(ii)(I). There is also a
3 catch-all provision, which provides: "As determined by the
4 Director of the Bureau of Prisons, there exists in the defendant's
5 case an extraordinary and compelling reason other than, or in
6 combination with, the reasons described in subdivisions (A)
7 through (C)." *Id.* app. n.(1)(D).

8 The government concedes that extraordinary and compelling
9 reasons exist in this case. Williams is both housed in an
10 institution where COVID-19 has spread widely and suffers from
11 several ailments that put him at a greater risk of COVID-19
12 complications: heart disease, hypertension, kidney disease and
13 obesity. The court concludes that extraordinary and compelling
14 reasons exist.

15 **C. Danger to the Community**

16 The court may grant compassionate release only if the
17 defendant is not a danger to any other person or to the community,
18 as provided in 18 U.S.C. § 3142(g). *United States v. Johnson*, 2020
19 WL 2114357, at *1 (E.D. Wash. May 4, 2020) ("[T]he Court should
20 not grant a sentence reduction if the defendant poses a risk of
21 danger to the community, as defined in the Bail Reform Act.").
22 Under § 3142(g), the court must consider:

23 (1) the nature and circumstances of the offense charged,
24 including whether the offense is a crime of violence, a
25 violation of section 1591, a Federal crime of terrorism,
26 or involves a minor victim or a controlled substance,
firearm, explosive, or destructive device;

27 (2) the weight of the evidence against the person;
28

1 (3) the history and characteristics of the person,
including--

2 (A) the person's character, physical and
3 mental condition, family ties, employment,
4 financial resources, length of residence in
the community, community ties, past conduct,
5 history relating to drug or alcohol abuse,
criminal history, and record concerning
appearance at court proceedings; and

6 (B) whether, at the time of the current
7 offense or arrest, the person was on
probation, on parole, or on other release
8 pending trial, sentencing, appeal, or
completion of sentence for an offense under
Federal, State, or local law; and

9 (4) the nature and seriousness of the danger to any
10 person or the community that would be posed by the
11 person's release.

12 18 U.S.C. § 3142(g).

13 The instant offense involved a bank robbery that included a
14 threat of violence. Previously, Williams committed a string of
15 robberies, many of them armed, in 1991. He was incarcerated until
16 May 1999 and less than seven months later committed the offenses
17 involved in this case. In addition, he also committed yet another
armed robbery around this time.

18 The offense in this action was violent and one of many violent
19 crimes Williams committed using firearms to threaten victims.
20 While Williams argues that all of his offenses were committed more
21 than twenty years ago, that fact is only minimally probative given
22 that he has been incarcerated for all of the past twenty years.
23 In addition, Williams committed the instant offense less than seven
24 months after being released from an 87-month sentence in California
25 state court.

26 The offense in this case was part of a violent and continuous
27 criminal history that frequently involved using firearms to
28

1 threaten victims. Williams' efforts to improve himself and
2 relatively clean disciplinary history are commendable, but the
3 court is not persuaded that such conduct outweighs his violent
4 criminal history. Accordingly, on those grounds, the court will
5 deny the motion for compassionate release.

6 **D. 18 U.S.C. § 3553(a) Factors**

7 Finally, the factors under § 3553(a) also do not support early
8 release. The nature and circumstances of Williams' offense and
9 other offenses were serious. Further, Williams has served less
10 than a third of his sentence in this case - and even assuming he
11 receives all good-time credit available he has served less than
12 forty percent of his sentence. The court believes that Williams
13 should serve the full sentence which was imposed in order to
14 reflect the seriousness of the offense, promote respect for the
15 law, provide just punishment for the offense, afford adequate
16 deterrence to criminal conduct, protect the public from further
17 crimes of the defendant, and avoid unwarranted sentencing
18 disparities.

19 **III. Conclusion**

20 In accordance with the foregoing, Williams' motion for
21 compassionate release (ECF No. 44) is hereby DENIED.

22 IT IS SO ORDERED.

23 DATED: This 14th day of September, 2020.

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25

26 UNITED STATES DISTRICT JUDGE
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